

ZONING ORDINANCE

If you believe the Zoning Administrator made a decision in error, there are procedures set up that allow you to Appeal that decision.

Fauquier County

Zoning Administrator.

It is important to note that the BZA or BOS, in considering an Appeal, cannot consider what is in the public interest, issues of equity or hardship, or the validity of specific Zoning Ordinance provisions. The BZA's or BOS' authority when hearing an Appeal is limited to determining whether or not the Zoning Administrator's Determination is consistent with the rules set forth in the County's Zoning Ordinance.

FAUQUIER COUNTY

Department of Community Development

ZONING & DEVELOPMENT SERVICES

29 Ashby Street
Suite 310

Warrenton, Virginia 20186

Phone: 540-422-8220

Fax: 540-422-8231

Additional information available online at
www.fauquiercounty.gov

Appeal of Zoning Administrator Determinations



FAUQUIER COUNTY

Department of Community
Development



Appeal of Zoning Administrator Determinations

The *Code of Virginia* and Fauquier County Zoning Ordinance give responsibility for administering and enforcing the Zoning Ordinance to the Zoning Administrator. These responsibilities require the Zoning Administrator to interpret the applicability of the County's Zoning Ordinance to specific situations in order to decide (determine) whether it is or is not consistent with the Ordinance's provisions. The regulations also establish procedures for appealing the determinations made by the Zoning Administrator. This brochure provides basic information on the Appeal process and should not be considered legal advice. While an appellant is not required to hire an attorney to submit an Appeal, seeking legal advice to assist in the preparation and presentation of Appeals may be of value to an appellant. All costs of private legal services are solely the responsibility of the appellant.

The provisions related to the Appeal process are set forth in Sections 13-301 of the Fauquier County Zoning Ordinance and 15.2-2311 of the *Code of Virginia*. This brochure provides answers to the most Frequently Asked Questions regarding Appeals.

What is a "Determination?"

Only a Determination of the Zoning Administrator may be Appealed. Not every document produced or signed by the Zoning Administrator constitutes an appealable Determination, because they are not all considered "Determinations." Determinations occur when the Zoning Administrator approves or denies permits. Determinations also occur outside the approval process when the Zoning

Administrator determines the applicability of the Ordinance to a specific situation. Generally, the Zoning Administrator will not issue formal Determinations unless requested to do so in writing and usually after prior consultation with the requesting party. A formal Determination by the Zoning Administrator may be requested in writing and the Zoning Administrator may take up to 90 days after receiving a written request, to render a Determination in writing.

How do I file an appeal of a Zoning Administrator Determination?

The form for filing an Appeal is found on the Department of Community Development's webpage <http://www.fauquiercounty.gov/government/departments/commdev/index.cfm?action=zoningappeal>. An Appeal application must be filed in writing utilizing this form and must include a clear statement setting forth the reasons why the decision of the Zoning Administrator is believed to be incorrect. The fee for filing an Appeal is \$500, but this fee is returned to the appellant if the Determination of the Zoning Administrator is overturned. An Appeal must be filed within 30 days of the date of the Zoning Administrator's Determination. The failure to file a timely appeal results in the official Determination becoming final and binding.

Who decides an Appeal?

Most Appeals are heard by the Board of Zoning Appeals (BZA), a five-person Board comprised of County residents appointed by the Fauquier County Circuit Court judge (for more information about the BZA, see separate brochure on BZA). However, there are two types

of Appeals that are heard by the Board of Supervisors (BOS) instead of the BZA: Appeals of Determinations related to rezoning proffers and Determinations related to extensions of Special Permits and Special Exceptions.

What is the process for an Appeal?

Once an Appeal application is submitted, the item will be placed on the next BZA or BOS agenda for which the item can be properly advertised. The BZA meets the first Thursday of each month and the BOS meets the second Thursday of each month. The appellant will receive a letter from Community Development indicating the date the item is scheduled. The Zoning Administrator will prepare a staff report for the BZA or BOS setting forth the rationale for the original Determination, and a copy of this report will be provided to the appellant in advance of the meeting date. The BZA has detailed procedures for processing an Appeal that also provide opportunity for the appellant to submit a rebuttal in writing in advance of the meeting. These detailed procedures can be found on the County's website with the application form. The procedures are also provided to all appellants when an Appeal is initially filed. On the date of the BZA or BOS meeting, County staff shall explain the basis for his/her determination and then the appellant has the opportunity to present arguments for overturning the Determination. The BZA and BOS may reverse or affirm, wholly or partly, or may modify, the decision of the Zoning Administrator. The concurring vote of at least three BZA or BOS members is necessary to reverse the Determination of the